

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/915,150
Applicant : Gary R. DelDuca *et al.*
Filed : July 25, 2001
Title : Methods for Making Modified Atmospheric Packages

TC/A.U. : 1761
Examiner : Robert A. Madsen

Docket No. : 47097-01080

**FIFTH DECLARATION OF GARY R. DELDUCA
UNDER 37 C.F.R. § 1.132**

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313

CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313 on the date indicated below:

05/25/2006
Date


Adrienne White

Dear Commissioner:

I, Gary R. DelDuca, declare that:

1. I hold a degree of B.S. in Mechanical Engineering From Rochester Institute of Technology in Rochester, New York that was obtained in 1980.

2. From 1980-1995, I worked as a developmental and senior engineer for Mobil Chemical Company, Plastics Division. As a developmental engineer, I worked in process and product development in the area of foam products. As a senior engineer, some of my responsibilities included designing specialized machinery that included machinery directed to stacking trays for meat processes. Mobil Chemical Company, Plastics Division was purchased by Tenneco Inc. in 1995. From 1995 to the present, I have been a Technical Manager for Tenneco Packaging Inc. in the area of modified atmosphere packaging (MAP) for meats. My responsibilities have included designing, developing, and implementing such modified

atmosphere packaging for meat and processes using the same. In 1999, Tenneco Packaging Inc. was renamed Pactiv Corporation (“Pactiv”).

3. In the Office Action dated January 25, 2006, it is stated that Woodruff “teaches surface contact of a meat with CO to maintain a red color, will have CO removably associated with the meat”. Page 5.

4. Woodruff does not teach or suggest that the color of the meat pigment turns brown in a natural time period. For example, Woodruff in Example 1 discloses a 0.5 lb. beefsteak that was exposed to 0.5% CO, which was nearly all absorbed two days later. *See* col. 4, lines 34-48. After being exposed in a modified atmosphere that included 16% oxygen, “the beefsteak retained its good red color, and the carboxymyoglobin color had penetrated no more deeply than it had at the end of the two days.” *See* Col. 4, lines 49-54. This passage implies that the carboxymyoglobin color was still retained within the beefsteak after 6 days despite being exposed to an atmosphere with a generally similar amount of oxygen as in air (compare about 21% oxygen to 16% oxygen). It would be expected to one skilled in the art that the beefsteak would turn brown in about 2-3 days, depending on the cut of meat. Thus, this example clearly shows that the beefsteak of Woodruff in Example 1 did not turn brown in a natural time period, but rather “fixed” the color of the meat pigment. Similarly, in Example 1 of Woodruff, a 0.5 lb. beefsteak exposed to 2.5% CO under similar conditions also retained its good color after 6 days. *See* col. 4, line 55- col. 5, line 6.

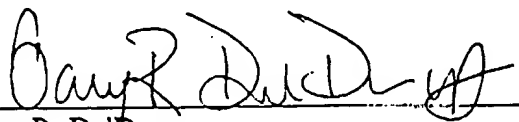
5. None of the other examples of Woodruff supports a modified atmosphere package wherein the CO associated with the raw meat is adapted to be removed such that the color of the meat pigment is not fixed and turns brown in a natural time period. Rather, the other examples of Woodruff generally disclose the condition of the meat pigment while being stored in a modified atmosphere containing CO.

6. In summary, Woodruff does not disclose, teach or suggest that the use of CO on meat pigment turns brown in a natural time period, but rather Woodruff teaches and suggests "fixing" the color of the meat pigment in Example 1.

7. Koch discloses that "[o]f course, if desired, the final cuts rather than just the primal cuts may be individually wrapped in the cover such as shown in FIGS. 1 and 2, this cover preferably being replaced with a conventional cover by the retailer." Col. 3, lines 13-16. This passage, however, does not disclose, teach or suggest that the color of the meat pigment is not fixed and will turn brown in a natural time period. Furthermore, this passage has nothing to do with the statement in the Office Action directed to Koch on the meat color ("Koch et al. teach a meat surface that has been exposed to CO for 7 days during storage under a modified atmosphere will remain red in color for 3 days after being removed from the modified atmosphere package[] and packaged in conventional wrapper at[] the retail outlet"). See page 5 of the Office Action. Rather, Koch discloses "[w]hen the primal cuts arrive at the retail outlet, the covers are removed and the meat is cut into individual steaks, roasts, etc. which may be separately wrapped in conventional wrapping materials. It has been found that meat will release a saleable red color for as long as 10 days when covered with the cover herein described for the first seven days and with a conventional cover for the remaining days." Col. 3, lines 5-13 of Koch (underlining added).

8. I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: May 24, 2006



Gary R. DelDuca